

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change consists of modifications to NSCC's rules relating to Mutual Fund Services transactions to allow NSCC to make and receive same-day funds payments in connection with the settlement of certain mutual fund transactions.

### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

#### **A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

The purpose of the proposed rule change is to enable NSCC to offer same-day funds money settlement capabilities as part of its Fund/Serv Service. Currently, NSCC's Fund/Serv service processes mutual fund transactions in which the money settlement occurs in next-day funds. Money settlement for money market and no-load mutual fund transactions occurs in same-day funds and cannot presently be accommodated by NSCC's Fund/Serv service. The proposed rule change will permit NSCC to make and receive same-day funds payments in connection with the settlement of money market and no-load mutual fund transactions.<sup>2</sup>

NSCC will not net a member's same-day funds debit or credit with the member's next-day funds debit or credit. Accordingly, the proposed rule change modifies NSCC Rule 12 to clarify that there will be more than one mutual funds settling trades summary which will reflect amounts payable to or payable by NSCC for the settlement of Mutual Fund Services transactions. NSCC will produce a mutual funds settling trades summary that will evidence the member's same-day funds mutual funds settlement obligation and a separate mutual funds settling trades

summary that will evidence the member's mutual funds obligation settling in next-day funds. The proposed rule change also makes technical changes to Sections B and C of NSCC's Rule 52 to conform the language regarding money settlement and the cross-references to NSCC's settlement rule.

NSCC believes that the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions.

#### **B. Self-Regulatory Organization's Statement on Burden on Competition**

NSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

#### **C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal offices of NSCC. All submissions should refer to File No. SR-NSCC-94-19 and should be submitted by January 24, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

**Jonathan G. Katz,**

Secretary.

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[Release No. 34-35139; File No. SR-NYSE-94-34]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Amendment of Exchange Rule 92 To Permit Trading Along With Customers**

December 22, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 27, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, and on December 20, 1994, submitted amendment no. 1 to the proposed rule change, as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change consists of an amendment to Exchange Rule 92 to permit member organizations to trade along with customers when liquidating a block facilitation position, subject to specified conditions.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included

<sup>2</sup> NSCC presently receives same-day funds payments from Fund Members and Mutual Fund Processors for dividend amounts owed and processed through NSCC's Networking service and for commission amounts owed and processed through NSCC's Commission Settlement Service.

<sup>3</sup> 17 CFR 200.30-3(a)(12) (1994).

statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Currently, Exchange Rule 92 provides that members may not trade for their own accounts at a price at which they hold executable customer orders. The rule does not contain any exceptions for any type of proprietary transactions, including transactions where a member firm trades for its own account along with a customer's block-size order when liquidating a proprietary block facilitation position, even if the customer has given permission for the firm to trade along with the order.

The ability to liquidate a block facilitation position in such circumstances, however, is generally perceived by positioning firms and their institutional customers as a reasonable aspect of the block facilitation business, provided there is disclosure to customers and customer consent. The inability to liquidate such positions in these circumstances may impede the block facilitation business, as firms may be reluctant to assume block facilitation positions if they cannot liquidate them, subject to appropriate safeguards, while representing customer orders.

The Exchange is proposing to amend Rule 92 to permit member organizations to trade along with a customer, when liquidating a block facilitation position, subject to the following conditions:

- The customer is not an individual investor;
- The customer's order is for 10,000 shares or more;
- The customer has given express permission for the member organization to trade along with the order, including an understanding of the relative price and size of allocated execution reports;
- The member organization is liquidating a position acquired in the course of facilitating a block transaction; and
- The member organization's orders are for an account used to record transactions whereby the member organization acquires positions in the course of facilitating customer orders of 10,000 shares or more (a "proprietary facilitation account").

The Exchange intends to inform members and member organizations that, although the amended rule does not outline a specific method of record keeping evidencing that a customer has given permission to trade along, the burden of proof to demonstrate that customer consent was obtained will fall on the member or member organization.

Paragraph (a) of the proposed rule change extends the provisions of Rule 92 to trades by an Exchange member or member organization on "any other market center." This provision means that, for Exchange members, the broad concepts of agency law and fiduciary duty codified in paragraph (a) of Rule 92 are intended to apply to all agency representation, irrespective of market center. The limited exception provided in paragraph (b), however, is intended to apply only to transactions by members on the Exchange. Other market centers may choose to adopt, or not adopt, a comparable exception.

The supplementary material in section .10 of the proposed rule change imputes knowledge of customer orders to members or employees engaged in proprietary trading for a member or member organization, unless that organization has a functional separation of the area doing the proprietary trading from other areas of the organization (e.g., as between a broker dealer operating with an exemption from certain specialist rules pursuant to Exchange Rule 98 and an affiliated specialist unit).

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed rule change will enable member organizations to add depth and liquidity to the Exchange's market, while continuing to provide customer protection through the requirement of customer approval for trading along situations.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-94-34 and should be submitted by January 24, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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